

AMENDED IN SENATE APRIL 24, 2012

**SENATE BILL**

**No. 1342**

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**Introduced by Senator Emmerson**

February 24, 2012

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An act to amend Section 27388 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Emmerson. Counties: recording: real estate instruments.

Existing law authorizes the board of supervisors to adopt, by resolution, a fee of up to \$3 for each recording of a real estate instrument, paper, or notice required or permitted by law to be recorded, except as specified. Existing law defines the term “real estate instrument” to mean a deed of trust, an assignment of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, or a notice of rescission of declaration of default.

This bill would increase the highest fee that may be charged to \$10 and would also include in the definition of “real estate instrument” an amended deed of trust, *an abstract of judgment, an affidavit*, an assignment of rents, an assignment of a lease, a construction trust deed, *covenants, conditions, and restrictions (CC&Rs)*, a declaration of homestead, an easement, a lease, *a lien* a lot line adjustment, a mechanics lien, a modification for deed of trust, a notice of completion, a quitclaim deed, a subordination agreement, or a trustee’s deed upon sale, *and any Uniform Commercial Code amendment, assignment, continuation, statement, or termination*.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) The current recording fee collected to fund the Real Estate*  
4     *Prosecutions Trust Fund is insufficient to adequately fund real*  
5     *estate fraud prosecutions and needs to be increased.*

6     *(b) Greater specificity is needed with regard to the types of real*  
7     *estate instruments to which the current recording fee may be*  
8     *applied.*

9     *(c) In order to promote housing and homeownership*  
10    *opportunities, the recording fee imposed by this act should not be*  
11    *applied to any recordings made in connection with a sale of real*  
12    *property. Purchasing housing is likely the largest purchase made*  
13    *by Californians, and it is the intent of this act to not increase*  
14    *transaction costs associated with those transfers.*

15    ~~SECTION 1.~~

16    *SEC. 2. Section 27388 of the Government Code is amended*  
17    *to read:*

18    27388. (a) In addition to any other recording fees specified in  
19    this code, upon the adoption of a resolution by the county board  
20    of supervisors, a fee of up to ten dollars (\$10) shall be paid at the  
21    time of recording of every real estate instrument, paper, or notice  
22    required or permitted by law to be recorded within that county,  
23    except those expressly exempted from payment of recording fees.  
24    For purposes of this section, “real estate instrument” means a deed  
25    of trust, an assignment of deed of trust, an amended deed of trust,  
26    *an abstract of judgment, an affidavit*, an assignment of rents, an  
27    assignment of a lease, a construction trust deed, *covenants,*  
28    *conditions, and restrictions (CC&Rs)*, a declaration of homestead,  
29    an easement, a lease, *a lien*, a lot line adjustment, a mechanics  
30    lien, a modification for deed of trust, a notice of completion, a  
31    quitclaim deed, a subordination agreement, *a release*, a  
32    reconveyance, a request for notice, a notice of default, a substitution  
33    of trustee, a notice of trustee sale, a trustee’s deed upon sale, or a  
34    notice of rescission of declaration of default, *or any Uniform*  
35    *Commercial Code amendment, assignment, continuation,*

1 *statement, or termination.* “Real estate instrument” does not include  
 2 any deed, instrument, or writing *recorded in connection with a*  
 3 *transfer* subject to the imposition of a documentary transfer tax as  
 4 defined in Section 11911 of the Revenue and Taxation Code, ~~nor~~  
 5 ~~any document required to facilitate the transfer subject to the~~  
 6 ~~documentary transfer tax.~~ The fees, after deduction of any actual  
 7 and necessary administrative costs incurred by the county *recorder*  
 8 in carrying out this section, shall be paid quarterly to the county  
 9 auditor or director of finance, to be placed in the Real Estate Fraud  
 10 Prosecution Trust Fund. The amount deducted for administrative  
 11 costs shall not exceed 10 percent of the fees paid pursuant to this  
 12 section.

13 (b) Money placed in the Real Estate Fraud Prosecution Trust  
 14 Fund shall be expended to fund programs to enhance the capacity  
 15 of local police and prosecutors to deter, investigate, and prosecute  
 16 real estate fraud crimes. After deduction of the actual and necessary  
 17 administrative costs referred to in subdivision (a), 60 percent of  
 18 the funds shall be distributed to district attorneys subject to review  
 19 pursuant to subdivision (d), and 40 percent of the funds shall be  
 20 distributed to local law enforcement agencies within the county  
 21 in accordance with subdivision (c). In those counties where the  
 22 investigation of real estate fraud is done exclusively by the district  
 23 attorney, after deduction of the actual and necessary administrative  
 24 costs referred to in subdivision (a), 100 percent of the funds shall  
 25 be distributed to the district attorney, subject to review pursuant  
 26 to subdivision (d). *A portion of the funds may be directly allocated*  
 27 *to the county recorder to support county recorder fraud prevention*  
 28 *programs, including, but not limited to, the fraud prevention*  
 29 *program provided for in Section 27297.7. Prior to establishing or*  
 30 *increasing fees pursuant to this section, the board of supervisors*  
 31 *may consider support for county recorder fraud prevention*  
 32 *programs.* The funds so distributed shall be expended for the  
 33 exclusive purpose of deterring, investigating, and prosecuting real  
 34 estate fraud crimes.

35 (c) The county auditor or director of finance shall distribute  
 36 funds in the Real Estate Fraud Prosecution Trust Fund to eligible  
 37 law enforcement agencies within the county pursuant to subdivision  
 38 (b), as determined by a Real Estate Fraud Prosecution Trust Fund  
 39 Committee composed of the district attorney, the county chief  
 40 administrative officer, the chief officer responsible for consumer

1 protection within the county, and the chief law enforcement officer  
2 of one law enforcement agency receiving funding from the Real  
3 Estate Fraud Prosecution Trust Fund, the latter being selected by  
4 a majority of the other three members of the committee. The chief  
5 law enforcement officer shall be a nonvoting member of the  
6 committee and shall serve a one-year term, which may be renewed.  
7 Members may appoint representatives of their offices to serve on  
8 the committee. If a county lacks a chief officer responsible for  
9 consumer protection, the county board of supervisors may appoint  
10 an appropriate representative to serve on the committee. The  
11 committee shall establish and publish deadlines and written  
12 procedures for local law enforcement agencies within the county  
13 to apply for the use of funds and shall review applications and  
14 make determinations by majority vote as to the award of funds  
15 using the following criteria:

16 (1) Each law enforcement agency that seeks funds shall submit  
17 a written application to the committee setting forth in detail the  
18 agency's proposed use of the funds.

19 (2) In order to qualify for receipt of funds, each law enforcement  
20 agency submitting an application shall provide written evidence  
21 that the agency either:

22 (A) Has a unit, division, or section devoted to the investigation  
23 or prosecution of real estate fraud, or both, and the unit, division,  
24 or section has been in existence for at least one year prior to the  
25 application date.

26 (B) Has on a regular basis, during the three years immediately  
27 preceding the application date, accepted for investigation or  
28 prosecution, or both, and assigned to specific persons employed  
29 by the agency, cases of suspected real estate fraud, and actively  
30 investigated and prosecuted those cases.

31 (3) The committee's determination to award funds to a law  
32 enforcement agency shall be based on, but not be limited to, (A)  
33 the number of real estate fraud cases filed in the prior year; (B)  
34 the number of real estate fraud cases investigated in the prior year;  
35 (C) the number of victims involved in the cases filed; and (D) the  
36 total aggregated monetary loss suffered by victims, including  
37 individuals, associations, institutions, or corporations, as a result  
38 of the real estate fraud cases filed, and those under active  
39 investigation by that law enforcement agency.

(4) Each law enforcement agency that, pursuant to this section, has been awarded funds in the previous year, upon reapplication for funds to the committee in each successive year, in addition to any information the committee may require in paragraph (3), shall be required to submit a detailed accounting of funds received and expended in the prior year. The accounting shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds; and (D) other relevant information the committee may reasonably require.

(d) The county board of supervisors shall annually review the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report. The district attorney shall submit the annual report to the board and to the Legislative Analyst's Office on or before September 1 of each year. The Legislative Analyst's Office shall compile the results and report to the Legislature, detailing both:

(1) Facts, based upon, but not limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; (D) the number of convictions obtained in the prior year; and (E) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, prosecutions, and convictions that resulted from the expenditure of funds; and (D) other relevant information provided at the discretion of the district attorney.

(e) A county in which a district attorney fails to submit an annual report to the Legislative Analyst's Office pursuant to the

1 requirements of subdivision (d) shall not expend funds held in that  
2 county's Real Estate Fraud Prosecution Trust Fund until the district  
3 attorney has submitted an annual report for the county's most  
4 recent full fiscal year.

5 (f) Annual reports submitted to the Legislative Analyst's Office  
6 pursuant to subdivision (d) shall be made in a standard form and  
7 manner determined by the Legislative Analyst's Office, in  
8 consultation with participating law enforcement agencies.

9 (g) The intent of the Legislature in enacting this section is to  
10 have an impact on real estate fraud involving the largest number  
11 of victims. To the extent possible, an emphasis should be placed  
12 on fraud against individuals whose residences are in danger of, or  
13 are in, foreclosure as defined in subdivision (b) of Section 1695.1  
14 of the Civil Code. Case filing decisions continue to be at the  
15 discretion of the prosecutor.

16 (h) A district attorney's office or a local enforcement agency  
17 that has undertaken investigations and prosecutions that will  
18 continue into a subsequent program year may receive nonexpended  
19 funds from the previous fiscal year subsequent to the annual  
20 submission of information detailing the accounting of funds  
21 received and expended in the prior year.

22 (i) No money collected pursuant to this section shall be expended  
23 to offset a reduction in any other source of funds. Funds from the  
24 Real Estate Fraud Prosecution Trust Fund shall be used only in  
25 connection with criminal investigations or prosecutions involving  
26 recorded real estate documents.